FILE COPY

Supreme Court of the United States

OCTOBER TERM, 1959

NO. 71 '39

JAMES MONROE, et al.,

Petitioners,

vs.

FRANK PAPE, et al.,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Petitioners, James and Flossie Monroe, Houston, Robert, Lawrence, Ralph and Jacqueline Stevens and James Monroe, Jr., pray that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Seventh Circuit, entered in the above-entitled cause on November 23, 1959.

CITATIONS TO OPINIONS BELOW.

The opinion of the Court of Appeals, reprinted in Appendix A hereto, is reported at 272 F. 2d 365 (1959). The Judgment of the Court of Appeals is reprinted as Appendix B.

The opinion of the District Court, reprinted in Appendix C hereto, has not been reported.

JURISDICTION

The judgment of the Court of Appeals was entered on November 23, 1959. An out of time petition for rehearing was denied on December 17, 1959. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254 (1).

QUESTIONS PRESENTED

1. Whether petitioners, a husband, wife and their six children, stated a cause of action for damages under the Civil Rights Act, R.S. § 1979, when they alleged that thirteen Chicago police officers, acting under color of law, arbitrarily and unreasonably broke into their home and searched it in the night time without a warrant, assaulted and battered them without cause, humiliated them with invidious references to their race, forced two of them from their bed naked, arbitrarily arrested and secretly confined one of them for interrogation and exhibition in line-ups and, finally, released them without ever charging any of them with a crime.

2. Whether a complaint alleging the above acts and a conspiracy by respondents to commit them states a cause of action under R.S. § 1980.

3. Whether a complaint setting forth the above acts and the above conspiracy plus all other elements of the tort defined by R.S. § 1981 states a claim under that section.

4. Whether a municipal corporation can be sued under the Civil Rights Act for damages arising from 14th Amendment due process and equal protection violations by its police officers.

STATUTES INVOLVED

R.S. § 1979 (42 U.S.C.A. § 1983):

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

Other statutory and constitutional provisions involved are:

28 U.S.C. (1958 ed.) § 1343 [28 U.S.C.A. § 1343]
28 U.S.C. (1958 ed.) § 1331 [28 U.S.C.A. § 1131]
R.S. § 1980 [42 U.S.C.A. § 1985 (3)]
R.S. § 1981 [42 U.S.C.A. §1986]
U.S. Constitution, Amendment 14

These provisions are reprinted in Appendix D to this petition.

STATEMENT

Petitioners brought this action for damages, alleging violation of their Fourteenth Amendment rights under the Civil Rights Act, R.S. §§ 1979, 1980, 1981, in the United States District Court for the Northern District of Illinois[1] against thirteen Chicago police officers and the City of Chicago. On June 5, 1959, the District Court dismissed the complaint for failure to state a claim. Leave to amend the complaint was denied. (Appellants' Appendix 38) On November 23, 1959, the Court of Appeals affirmed, for the same reason.

The complaint asserted:

In the early morning of October 29, 1958, Mr. and Mrs. James Monroe and their six children were at home in their Chicago apartment, asleep in their beds. At 5:45 A.M., Deputy Chief of Detectives Pape and twelve other policemen broke through the front and rear doors of the Monroe dwelling. (Appellants' Appendix 5)

Chief Pape and two others entered the bedroom of Mr. and Mrs. Monroe. They shined flashlights into the faces of the sleeping couple, pointed their pistols and ordered James Monroe out of his bed. Chief Pape cursed Mr. Monroe and threatened to shoot him if he didn't move fast. Mr. Monroe was naked. He left the bedroom at gunpoint. He was forced to stand in the center of his living room naked. (Appellants' Appendix 6-7)

Another officer ordered Mrs. Monroe out of bed. She refused, explaining that she was naked. The officer dragged her out and pushed her into the living room. Chief Pape was questioning Mr. Monroe. He kept calling him "nigger"

[1] Federal jurisdiction was invoked "under 28 U.S.C.A. §§ 1331 and 1343 and 42 U.S.C.A. §§ 1983, 1985 and 1986 and Amendment XIV to the Constitution of the United States." (Appellants' Appendix 1)

and "black boy," and hit him in the belly with his flashlight several times. Meanwhile, the six children were being herded into the living room. One detective kicked four-year-old James Monroe, Jr., who fell to the floor and began to cry. Later, Chief Pape struck Robert Stevens, knocked him down and pushed a third child, Houston, to the floor on top of Robert. (Appellants' Appendix 6-9)

Mrs. Monroe's daughter Jacqueline started for the back door. She wanted to reach a telephone, call a family friend and get help. An officer stepped between Jacqueline and the door, pushed her down and prevented her from leaving. (Appellants' Appendix 9-10)

The police searched every room. They ransacked the closets, throwing all the family's clothing on the floor. They opened and dumped all the drawers in the various pieces of furniture. They ripped open all the mattresses. (Appellants' Appendix 7, 10)

Mr. Monroe was then allowed to dress. His hands were chained together and he was escorted outside. (Appellants' Appendix 10-11)

The police had no warrant for the search or the arrest. (Appellants' Appendix 11-12) The search and seizure was arbitrary and unreasonable. (Appellants' Appendix 18)

Mr. Monroe was taken to police headquarters and imprisoned for about ten hours. Periodically, Mr. Monroe was removed from his cell and placed on exhibition in "line-ups". Between line-ups he was interrogated about a murder. (Appellants' Appendix 13)

Throughout his imprisonment Mr. Monroe was held on "open" charges. No bail was set. He was refused permission to call an attorney or his family. No one informed Mr. Monroe of his rights. (Appellants' Appendix 13-14)

The police had no intention of bringing him promptly to court to answer to a charge of crime. They had not arrested him for this purpose. (Appellants' Appendix 14-15, 17-18) He was being held in an attempt to coerce incriminating statements from him, to exhibit him before other officers and civilians, to punish him, and to "check up" on his background. (Appellants' Appendix 17-18) He was never brought before a judge. (Appellants' Appendix 13-14)

Twenty local courts with jurisdiction to receive criminal complaints and to admit to bail were in session during Mr. Monroe's detention, four of them in the same building where he was held. (Appellants' Appendix 16)

After ten hours, Mr. Monroe was released without charge. No charge ever was placed against him. (Appellants' Appendix 15)

REASONS FOR GRANTING THE WRIT

1. The Seventh Circuit's construction of R.S. § 1979 and the Fourteenth Amendment in this case squarely conflicts with the decision of the Fifth Circuit in *Davis* v. *Turner*, 197 F. 2d 847 (1952).[1a] The conflict is emphasized by the recent decision in *Jackson* v. *Duke*, 259 F. 2d 3 (5th Cir. 1958). Petitioners' complaint would have been sustained in the Fifth Circuit.[2]

2. No Supreme Court case has ever dealt with the applicability of the Civil Rights Act to damage actions against

[1a] R. S. §1979 was, at the time of *Davis* v. *Turner*, found at 8 U.S.C.A. §43, and was so cited by the Fifth Circuit in that opinion.

[2] The decision below also conflicts with the opinion of the Third Circuit in *Hague* v. *C. I. O.*, 101 F. 2d 774 at 781 (1939). This Court subsequently held that the Third Circuit should not have passed on the point decided at the indicated page. 307 U.S. 496, 516-17 (1939).

police officers.[3] Consequently, the lower courts are in conflict and confusion as to the existence, scope and limits of such a remedy for unconstitutional police action:

> "There is considerable doubt and confusion in the application of the Civil Rights Statutes throughout the Circuits."
>
> *Hoffman* v. *Halden*, 268 F. 2d 280, 289 (9th Cir. 1959)

> "We shall not, in the present confused and confusing state of the law, attempt to mark out the general scope and sweep of the civil rights statutes. . . ."
>
> *Deloach* v. *Rogers*, 268 F. 2d 928, 930 (5th Cir. 1959), quoting *McGuire* v. *Todd*, 198 F. 2d 60, 63 (5th Cir. 1952).

The conflicting results reached by federal courts all over the country bear out these statements of the Fifth and Ninth Circuits. *Compare State of Arkansas* v. *Central Surety Corp.*, 102 F. Supp. 444 (W.D. Ark. 1952) *with Mackey* v. *Chandler*, 152 F. Supp. 579 (W.D.S.C. 1957). *Compare Dye* v. *Cox*, 125 F. Supp. 714 (E.D. Va: 1954) *with Jennings* v. *Nester*, 217 F. 2d 153 (7th Cir. 1954). *Compare* the assumption in *Mueller* v. *Powell*, 203 F. 2d 797 (8th Cir. 1953) ("probable cause" is the standard to be employed in determining whether an arrest, detention

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[3] Appendix E to this petition contains a chronological list of the 37 reported civil cases filed under the Act in which police officers, constables, sheriffs, or sheriffs' deputies were parties defendant.

Appendix F contains a list of the seven such civil cases in which this Court has denied a petition for a writ of certiorari.

Appendix G contains a list of the 37 reported civil cases under the Act against police officials, broken down by Circuit, with a brief description of the facts and holding in each case.

and interrogation gives rise to liability under the Act), the reasoning and result in *Refoule* v. *Ellis*, 74 F. Supp. 336 (N.D.Ga. 1947) and the dictum in *Erickson* v. *Hogan*, 94 F. Supp. 459, 460 (S.D.N.Y. 1950) *with* the opinions below and *Mackey* v. *Chandler*, 152 F. Supp. 579 (W.D.S.C. 1957).

Even within the Court of Appeals for the Seventh Circuit, various panels have disagreed. *Compare Gieach* v. *Moynahan*, 207 F. 2d 714 (7th Cir. 1953) (unreasonable arrest, search, detention and coercion of confession creates a cause of action under the Act) *with Jennings* v. *Nester*, 217 F. 2d 153 (7th Cir. 1954) (similar facts, opposite holding), and *with* the opinion below.

As a result of this confusion it is impossible for attorneys to predict whether their cases may properly be filed under the Act. Thus the Act is rendered largely ineffective while costly and time-consuming litigation on threshold issues of jurisdiction and pleading proliferates.[4]

3. The decisions below conflict with *Wolf* v. *Colorado*, 338 U.S. 25 (1949).

The Court of Appeals below held that the Monroe family had no remedy under the Civil Rights Act against the thirteen policemen who committed what that court termed "an unreasonable search and seizure, a series of unjustified batteries and a long, inherently coercive and unjustifiably secret detention" against them. (Court of Appeals opinion,

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[4] Of the 37 reported opinions in civil suits against police officers under the Act, 20 dealt with such preliminary issues and were decided on the pleadings. See Appendix G, cases numbered 2, 3, 4, 5, 6, 7, 8, 9, 11, 12, 13, 14, 17, 18, 20, 21, 22, 23, 24, 25, 27, 28, 29, 31, 32, 34, 35, 36, 37. In one of the remaining cases, *Mackey* v. *Chandler*, 152 F. Supp. 579 (W.D.S.C. 1957), the court rendered judgment *n.o.v.* for defendants after a jury verdict for plaintiffs, holding that there was no federal jurisdiction. Apparently the case was not appealed. See *Shepard's Federal Reporter Citations*, Vol. L, No. 1, p. 422 (Jan. 1960).

272 F. 2d at 366, Appendix A, p. 14) The Court of Appeals rejected the claim that "these acts violated . . . *due process* rights under the Fourteenth Amendment and give rise to a proper cause of action under [R.S. § 1979]" (Court of Appeals opinion, 272 F. 2d at 366, Appendix A, p. 14; court's emphasis) The District Court below was even more explicit, quoting and relying on the assertion in *Mackey* v. *Chandler*, 152 F. Supp. 579, 582 (W.D.S.C. 1957) that:

> "The exemption from unreasonable searches and seizures is not . . . an element of due process of law guaranteed by the . . . Amendment against state action. . . ." (District Court opinion, Appendix C, p. 23; Appellees' Appendix 6)

But in *Wolf* v. *Colorado*, 388 U.S. 25, 27-28 (1949), this Court said:

> "The security of one's privacy against arbitrary intrusion by the police . . . is . . . implicit in 'the concept of ordered liberty' and as such enforceable against the States through the Due Process Clause."

All the Justices agreed. See 338 U.S. at 39, 40, 41, 47. The Court majority in *Wolf* held that the remedy for unreasonable searches and seizures by local police officers was "private action." 338 U.S. at 30-31[5]

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[5] As early as 1763, the English courts recognized that an unreasonable search and seizure without warrant, whether or not coupled with beatings and imprisonment, was not merely a violation of the common law, but was "contrary to the fundamental principles of the constitution" and "totally subversive of the liberty of the subject." *Wilkes* v. *Wood*, 19 How. St. Tr., col. 1153, 1167 (C.P., 1763). Indeed, such conduct by police officers was termed a violation of *Magna Charta*. *Huckle* v. *Money*, 19 How. St. Tr., col. 1404, 1405 (K.B. 1765). In each of these cases, as well as in *Entick* v. *Carrington*, 19 How. St. Tr., col. 1029 (C.P. 1765), it was recognized that an action for damages would lie for such a violation.

The 14th Amendment significance of *Entick* and its companion cases has been noted by this Court. See, *e.g.*, *Frank* v. *Maryland*, 359 U.S. 360, 363 (1959).

The Court of Appeals below did not even mention *Wolf*. So long as the opinions below stand, *Wolf* is a dead letter in the Seventh Circuit.

In recent years, it has been suggested that the *Wolf* doctrine is meaningless:

> ". . . an unreasonable search by a state agent . . . is not such a violation of the Fourteenth Amendment as will invoke operation of that Amendment."
>
> *Mackey* v. *Chandler*, 152 F. Supp. 579, 581 (W.D.S.C. 1957).

> ". . . Wolf's intermediate finding signifies little if anything. . . ."
>
> Kamisar, "*Wolf* and *Lustig* Ten Years Later: Illegal State Evidence in State and Federal Courts," 43 *Minn. L. Rev.* 1083, 1109 (1959).

> "It would seem that the practical effect of the *Wolf* case is virtually to leave for local determination, unimpeded by federal judicial supervision, the matter of making effective a federal guarantee of a basic constitutional immunity."
>
> Allen, "The Wolf case: Search and Seizure, Federalism, and the Civil Liberties," 45 *Ill. L. Rev.* 1, 9 (1950).

> ". . . (A)lthough recognizing the right, the majority leaves it unenforceable.
>
> • • • • •
>
> "The net effect of the *Wolf* decision was the recognition of a *basic* constitutional right without any corresponding remedies, a privilege without substance, an immunity without force."
>
> Handler, "The Fourth Amendment, Federalism, and Mr. Justice Frankfurter," 8 *Syracuse L. Rev.* 166, 176, 178 (1957).

This case presents the Court with a striking opportunity to demonstrate that the *Wolf* rule has substance. Justice Jackson and Chief Justice Warren pointed the way in *Irvine* v. *California*, 347 U.S. 128, 137-38 (1954) where they suggested prosecuting the wrongdoing officers under the criminal provisions of the Act.[6] Also see *Stefanelli* v. *Minard*, 342 U.S. 117 (1951), an equity action under R. S. § 1979 which, invoking *Wolf*, sought to enjoin state use of illegally seized evidence:

> "... (U)nder the very section now invoked, we have withheld relief in equity *even when recognizing that comparable facts would create a cause of action for damages.*" 342 U.S. at 122. (Emphasis supplied)

4. Every search and seizure case which has reached this Court has involved a criminal, usually "caught red handed." *Draper* v. *United States*, 358 U.S. 307, 314 (1959). Justices have recognized that the Constitutional safeguard is associated in the public mind with the "dubious characters" who invoke it. *Harris* v. *United States*, 331 U.S. 145, 156 (1947).

This is the first search and seizure case ever to come before this Court in which the rights of *innocent* persons are in question. As such, it presents novel issues of great importance and a significant occasion for the Court to expound the basic meaning of the Constitutional right to freedom from arbitrary police invasions of the home.

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[6] The suggestion in *Irvine* was that the offending officers be prosecuted under 18 U.S.C. § 242. Section 242 is *in pari materia* with R.S. § 1979. *Screws* v. *U. S.*, 325 U.S. 91, 99-100 n. 8 (1945); *Gioch* v. *Moynahan*, 207 F. 2d 714, 717 (7th Cir. 1953); *Picking* v. *Pennsylvania R. Co.*, 151 F. 2d 240, 248 (3rd Cir. 1945).

CONCLUSION.

There is a conflict between the Circuits. The lower courts are in confusion. The leading Supreme Court case has been rejected or ignored below. The constitutional rights of innocent persons have been outrageously violated.

For the foregoing reasons the Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

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APPENDIX A

Opinion of the Court of Appeals

FOR THE SEVENTH CIRCUIT

November 23, 1959

Before HASTINGS, *Chief Judge*, KNOCH and CASTLE, *Circuit Judges*.

HASTINGS, *Chief Judge*. This action was brought in the district court under the Federal Civil Right Act, 42 U.S.C.A. §§ 1983, 1985 and 1986, to recover damages for the alleged misconduct of the defendant Chicago, Illinois police officers. Such misconduct was claimed to be in violation of the rights of plaintiffs under the Fourteenth Amendment to the Constitution of the United States. The City of Chicago, Illinois was joined as a defendant, liability being predicated on the doctrine of *respondeat superior*. The trial court entered an order dismissing the complaint on defendants' motion on the ground that the complaint failed to state a cause of action under the Act, then denied leave to amend; this appeal followed.

The plaintiffs are James Monroe and Flossie Monroe, husband and wife, and their six children represented by their mother, Flossie Monroe, as next friend. The defendants are Frank Pape, Deputy Chief of Detectives of the Chicago Police Department, and twelve unknown police officers assigned to the Detective Bureau designated as John Doe No. 1 to and including No. 12, and the City of Chicago, Illinois. The complaint contains nine counts.

Appendix A

Counts charging violation of 42 U.S.C.A. § 1983 are Counts I, IV and VII. Count I contains the basic factual allegations constituting plaintiffs' cause of action and seeks recovery of damages for James Monroe. Count IV incorporates the facts alleged in Count I and seeks recovery for Flossie Monroe, as does Count VII on behalf of the six Monroe children.

Counts charging violation of 42 U.S.C.A. § 1985 are Counts II, V and VIII, charging a conspiracy of defendants to commit the acts alleged in Count I, again praying damages for James Monroe, Flossie Monroe and the six Monroe children, respectively.

Counts charging violation of 42 U.S.C.A. § 1986 are Counts III, VI and IX, charging failure of each of the defendants to make any effort to prevent the accomplishment of the above conspiracy and seeking recovery for James Monroe, Flossie Monroe and the six Monroe children, respectively.

The complaint alleges an unreasonable search and seizure, a series of unjustified batteries and a long, inherently coercive and unjustifiably secret detention committed against plaintiffs by defendants acting under color of law. Since this matter is before us on the ruling granting the motion to dismiss, we are required to treat the allegations of gross misconduct as true for the purpose of review; and they need not be detailed in this opinion. Plaintiffs claim these acts violated their *due process* rights under the Fourteenth Amendment and give rise to a proper cause of action under Section 1983 of the Act. They further contend that a conspiracy to commit these acts violated their rights to *equal protection of the law* and furnish a proper basis for recovery under

Section 1985. By the same reasoning they contend that the allegations charging a failure to prevent the conspiracy sustain their right to recover under Section 1986.

The ultimate issue before us is whether the alleged misconduct on the part of *city police officers* of a state municipality makes a sufficient showing of a violation of the Federal Civil Rights Act.

This question is not new to this court and has been resolved adversely to plaintiffs' contentions. The most recent decision is that of *Stift* v. *Lynch*, 7 Cir., 267 F. 2d 237 (May 11, 1959). In *Stift*, recovery was sought under the same three sections of the Act as in the instant case. Named as defendants were a sheriff and deputy sheriff, in addition to a Justice of the Peace and the State's Attorney and his assistant. The dismissal of the complaint as to all defendants was affirmed. In sustaining the dismissal as to the sheriff and his deputy, the court said,

> "Under our decisions in *Eaton* v. *Bibb*, 7 Cir., 217 F. 2d 446, *Miles* v. *Armstrong*, 7 Cir., 207 F. 2d 284 and *United States ex rel. Atterbury* v. *Ragen*, 7 Cir., 237 F. 2d 953, we hold the complaint herein did not state a claim under the Federal Civil Rights Act upon which relief could be granted against defendants Lynch and Eichholz." (*Id.* at 240)

Stift distinguishes *Wakat* v. *Harlib*, 7 Cir., 253 F. 2d 59 (1958). See also, *Jennings* v. *Nester*, 7 Cir., 207 [*sic.* 217] F. 2d 153 (1955) [*sic.* (1954)].

We do not condone the alleged misconduct of defendants, if true, but that is not the question before us. Under the holding in *Stift* v. *Lynch*, *supra*, and the other decisions of this circuit referred to therein, some of which

are cited above, affirmance of the dismissal before us necessarily follows. Plaintiffs are not without their remedy in the state court.

In view of such a determination there is no claim for relief against the City of Chicago.

The order dismissing the complaint is

AFFIRMED.

APPENDIX B

Judgment of the Court of Appeals.

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT
Chicago 10, Illinois

Monday, November 23, 1959

Before

Hon. John S. Hastings, Chief Judge
Hon. Win G. Knoch, Circuit Judge
Hon. Latham Castle, Circuit Judge

(Caption)

This cause came on to be heard on the transcript of the record from the United States District Court for the Northern District of Illinois, Eastern Division, and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this court that the judgment of the said District Court in this cause appealed from be, and the same is hereby, AFFIRMED, with costs, in accordance with the Opinion of this Court filed this day.

APPENDIX C

Opinion of the United States District Court, Northern District of Illinois, Eastern Division

Transcript of Proceedings had at the hearing of the above-entitled cause before the Hon. Julius J. Hoffman, one of the Judges of said Court, sitting in his courtroom in the United States Court House at Chicago, Illinois on Friday, June 5, 1959, at 10:00 o'clock a. m.

Present:

Donald Page Moore, Esq. and Ernst Liebman, Esq., appeared on behalf of plaintiffs;

Hon. John C. Melaniphy, Corporation Counsel, City of Chicago, by Edward R. Hartigan, Esq., Asst. Corporation Counsel, appeared on behalf of defendants.

The Clerk: 59 C 329, James Monroe *vs.* Frank Pape, et al., Decision on Defendant's Motion to Dismiss Complaint.

The Court: I had you come in here gentlemen, because I thought I ought to give you some reasons for deciding this motion which is important.

This action, as we know, is based upon the Civil Rights Act, 42 U. S. C., Sections 1983, 1985 and 1986, and the Fourteenth Amendment of the United States Constitution.

The plaintiffs are James Monroe and Flossie Monroe, husband and wife, and six children represented by their mother, Flossie Monroe, as next friend.

Appendix C

The defendants are Frank Pape of the City of Chicago Police Department, twelve unknown police officers designated as John Doe No. 1 to and including No. 12, and the City of Chicago.

Count 1 of the complaint charges that on or about October 29, 1958, at about 5:45 a. m., while the plaintiffs were asleep in their bed, the defendants broke into the plaintiffs' apartment from both the front and the rear doors and according to the complaint the following events occurred:

Frank Pape and John Doe No. 1 and 2 entered the bedroom of James and Flossie Monroe, flashed their—shall we call them flashlights?

Mr. Moore: Yes, your Honor.

The Court: —upon them and pointed pistols at them and commanded James Monroe to walk into the living room while he was naked.

At this time Frank Pape allegedly cursed James Monroe and threatened to shoot him if he did not obey the various commands of the defendant. Thereupon James Monroe was forced to stand naked in his living room and his children and step-children, also plaintiffs in this case, were ordered into the living room and forced to remain in their night clothes.

During the time of these alleged occurrences, the defendant John Doe No. 1 went into the bedroom closet, seized the clothing in the closet and threw each article on the floor. At the same time John Doe No. 2 ordered Flossie Monroe from her bed while she was naked, but according to the complaint she was able to snatch a blanket to cover her nakedness. She was then pushed and escorted into the living room and forced to stand beside her husband James Monroe.

The complaint goes on to allege that while Flossie Monroe was being pushed into the living room. the defendant Frank Pape repeatedly hit and struck James Monroe and jabbed a flashlight into his stomach and referred to him as a "nigger" and "black boy".

Count 1 also alleges that the defendant John Doe No. 3 kicked the plaintiff James Monroe, Jr., a four year old child, and caused him to fall to the floor crying. Then Frank Pape struck the plaintiff Robert Stevens and knocked him down. The complaint goes on to allege that Frank Pape pushed and shoved the plaintiff Houston Stevens so that he fell across Robert Stevens. When Frank Pape struck Robert Stevens and pushed Houston Stevens, the plaintiff Jacqueline Stevens attempted to leave the apartment by the back door in order to reach a telephone, and John Doe No. 5 blocked her access to the back door and pushed her to the floor.

Count 1 further alleges that the defendants searched each and every room of the apartment, emptied all the drawers in the apartment and dumped their contents on the floor.

The defendants also ripped and cut mattress coverings of the beds and threw the contents of all closets on the floor. Thereafter the defendants provided James Monroe with clothing, handcuffed him and escorted him to a parked automobile. The defendants told Flossie Monroe that James Monroe was being taken to a police station for questioning.

Count 1 alleges that these acts were committed by the individual defendants, none of whom had a warrant for the search of the apartment or a warrant for the arrest of James Monroe.

Appendix C

Count 1 also alleges that after James Monroe was escorted to the automobile, four defendants, including Frank Pape, drove the plaintiff to the corner of Roosevelt Road and Homan Avenue in Chicago and parked the automobile and it remained there for approximately 30 minutes. These defendants then transported James Monroe to the Central Police Headquarters of the Chicago Police Department.

After his arrival at the Central Headquarters at or about 6:00 o'clock in the morning, James Monroe was imprisoned approximately ten hours and was from time to time placed upon exhibition in a so-called "line-up".

In addition, Count 1 alleges that during the incarceration, James Monroe was subjected to intermittent interrogation concerning the alleged murder of one Peter Saisi.

The complaint asserts that during the incarceration, James Monroe was never brought before a judge, court or magistrate; was never charged with a crime; was never allowed to make bail or post bond; was not permitted to contact his attorney, friends or family; was not informed of any formal charges placed against him; was not informed of his privilege against self-incrimination, and was not informed of his right to counsel.

At the conclusion of the 10 hour period of incarceration, James Monroe was released from custody by the defendants without having been charged with any crime.

Count 2 of the complaint alleges that prior to the acts alleged in Count 1, the individual defendants entered into a conspiracy with each other for the purpose of defeating the due course of justice and to deny James Monroe the equal protection of the law.

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Count 2 asserts that the individual defendants deprived James Monroe of his civil and constitutional rights and violated Section 1985 of the Civil Rights Act by conspiring to commit the acts alleged in Count 1 of the complaint.

Count 3 alleges that the defendants had knowledge of the conspiracy alleged in Count 2 and the power to prevent the conspiracy but failed to do so. This failure is asserted to be a violation of Section 1986 of the Civil Rights Act.

In Count 4 of the complaint, the plaintiff Flossie Monroe seeks damages for the same acts alleged by James Monroe in Count 1 which were committed against her by the defendants.

She alleges in Count 5 that the defendants violated Section 1985 of the Civil Rights Act when they committed the conspiracy alleged by James Monroe in Count 2.

In Count 6 she alleges that the defendants had knowledge of the conspiracy and failed to prevent its commission and therefore violated Section 1986 of the Civil Rights Act.

In Counts 7, 8 and 9, respectively, the minor plaintiffs, Houston Stevens, Robert Stevens, Lawrence Stevens, Jacqueline Stevens and James Monroe, Jr., allege that the defendants committed the same acts alleged by James Monroe in Count 1, the same conspiracy alleged by James Monroe in Count 2, and the same failure of defendants to prevent the conspiracy alleged by James Monroe in Count 3.

The defendants Frank Pape and the City of Chicago have moved to dismiss the complaint because it fails to state a claim upon which relief may be granted.

Now as to Frank Pope, there are eight plaintiffs in this action, each of whom has alleged a claim for relief based upon the same facts alleged by Janies Monroe in Count 1 of the complaint. Therefore, I shall not treat each plaintiff separately since the factual allegations are lengthy. I shall characterize or describe the acts of the defendants in the same manner in which the plaintiff has characterized them.

Dealing with the subject of search and seizure, Count 1 of the complaint alleges that the defendants Pape and the John Doe police officers broke and entered into the plaintiff's family apartment at 5:45 a. m. on October 29, 1958; that the defendants had no search warrant and that the search was arbitrary and unreasonable. The plaintiffs contend that this search and seizure is a violation of 42 United States Code, Section 1983.

The defendant argues that the plaintiffs have failed to allege that any evidence which might be used against the plaintiff was obtained by the illegal search and that therefore 42 U. S. C., Section 1983, was not violated.

The Supreme Court has recently said that "the security of one's privacy against arbitrary intrusion by the police is fundamental to a free society and as such protected by the Fourteenth Amendment." *Frank* v. *Maryland* decided by the Supreme Court on May 4, 1959; *Wolf* v. *Colorado*, 338 U. S. 25, at 27, decided in 1948.

Although the Fourteenth Amendment prohibits unreasonable searches by state officers, there is a limitation as to how far the federal government can and should go in supervising activities of state and local law enforcement agencies. See *Wolf* v. *Colorado* to which I have previously referred; an article by Allen on the *Wolf* Case, Search and Seizure, Federalism and the Civil Liberties, 45 Ill. Law Review 1, written and published in 1950.

This reasoned limitation was applied in *Mackey* v. *Chandler*, 152 Fed. Supp. 579, Western District of South Carolina, 1957. The *Mackey* case held that the Civil Rights Act did not provide a cause of action against state officers who unreasonably searched an individual's home. The Court stated:

> "The exemption from unreasonable searches and seizures is not one of the privileges and immunities of the citizens of the United States which the Fourteenth Amendment forbids the state to abridge, nor is it an element of due process of law guaranteed by the latter amendment against state action." That at page 582 of that opinion.

The Court in the *Mackey* case relied heavily upon the case of *Jennings* v. *Nester*, 217 F. 2d 153 decided by our Circuit in 1954 which involved an allegation of unlawful search of the person. Although the Court in the *Jennings* case did not deal expressly with this allegation, the Court held that the complaint did not state a claim for relief under the Civil Rights Act. In reaching this conclusion, the Court asserted that the Civil Rights Act was not designed to discipline state police officers and that the common law provides adequate actions for damages against errant police officers.

Although the *Mackey* case has been criticized, see Comment, Civil Rights Act Section 1983 and Illegal Search by State Officers, 10 Sanford Law Review 335 published in 1958, and the actions of the defendants, if true, may not be as we would like our police officers to behave,—and I don't know whether they are true or not—the search of the plaintiffs' apartment without a search warrant is not a violation of the Civil Rights Act, Section 1983. The only two cases which have been presented with this issue have concurred in that result. *Jennings* v. *Nester*, to which I have previously alluded, and the *Mackey* case, also referred to.

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Now as to the brutality, alleged brutality, Count 1 of the complaint alleges that Frank Pape committed batteries on James Monroe, Robert Stevens and Houston Stevens. In addition, Count 4 alleges that batteries were committed in Pape's presence by his fellow officers upon Flossie Monroe, Jacqueline Stevens and James Monroe, Jr. The plaintiffs argue that an intentional assault by an individual acting under state authority is a violation of the Civil Rights Act.

The defendant argues that an assault does not violate an individual's civil rights. The defendant is correct in this contention. An assault, without more, does not constitute a violation of the Civil Rights Act. *Screws* v. *United States*, 325 U. S. 91. In that case decided in 1945, the Court stated:

> "The fact that a prisoner is assaulted, injured, or even murdered by state officials does not necessarily mean that he is deprived of any right protected by or secured by the Constitution or laws of the United States." That from page 108 of that opinion.

In *Miles* v. *Armstrong*, 207 F. 2d 284, decided by our circuit in 1953, it was held that an aggravated assault did not violate the privileges and immunities clause of the Fourteenth Amendment. The Court in that case at page 187 said:

> "The injuries he asserts he has suffered are, in essence, an aggravated assault upon his person and wanton destruction of his property—grievous injuries surely. But they do not constitute privileges and immunities incident to United States citizenship; they are rather such that the perpetrators are punishable under state law where reparation may be obtained."

Accord: *United States ex rel. Atterbury* v. *Ragen*, 237 F. 2d 953, again decided by our circuit in 1956; *Knight* v. *Bibb*, 250 F. 2d 283, decided by the Seventh Circuit in 1957.

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It is true that the *Miles* case was concerned with Section 1985 rather than Section 1983 upon which the plaintiffs rely in the case at bar, and it is equally true that Section 1983 is broader than Section 1985 in that 1983 embraces violations of due process and such violations are not embraced by 1985. However, I have been unable to find any case which holds that an assault unaccompanied by other circumstances perpetrated by state officers constitutes a violation of due process rights.

There is nothing more than an allegation of assault and battery stated by the plaintiffs in the case at bar. There is no allegation that the assault and battery on any of the plaintiffs was designed to elicit "information and/or confessions." See *Geach* v. *Moynahan*, 207 F. 2d 714, Seventh Circuit, 1953.

I am of the opinion, therefore, that the brutality allegations of the plaintiff's complaint do not state a claim upon which relief may be granted under the Civil Rights Act.

Now as to the so-called incommunicado detention, Count 1 alleges among other things that James Monroe was arrested without a warrant and held for 10 hours for interrogation and was exhibited in police line-ups. In addition Count 1 alleges that James Monroe was never charged with any crime and was denied the right to bail and the advice of counsel.

The plaintiff James Monroe argues that such incommunicado detention was a denial of due process of law in violation of the Civil Rights Act.

The defendant asserts that false arrest and false imprisonment are not violations of the Civil Rights Act.

In the recents case of *Stift* v. *Lynch* decided by the Seventh Circuit on May 11, 1959, not yet in the books, an

action was brought under the Civil Rights Act against a sheriff and his deputy for false arrest, for false imprisonment, and the alleged failure to charge the plaintiffs therein with a crime until after the expiration of about two hours.

The Court held that these acts did not violate the Civil Rights Act. Accord: *Yglesias* v. *Gulfstream Park Racing Association, Inc.*, 201 F. 2d 817 decided by the Fifth Circuit in 1953; *Dinneen* v. *Williams*, 219 F. 2d 428, decided by the Ninth Circuit in 1955.

We come now to a discussion of the conspiracy allegation. In addition to the charge that the defendants violated Section 1983 of the Civil Rights Act, the complaint asserts that a conspiracy existed between the defendants pursuant to which they illegally searched the plaintiff's apartment, assaulted various plaintiffs, seized James Monroe and imprisoned him for ten hours. The plaintiffs assert that this conspiracy was a deprivation of equal protection and in violation of Section 1985.

The defendant contends that the complaint fails to allege wherein the plaintiff was deprived of equal protection.

It must be pointed out that Section 1983 of the Civil Rights Act provides a claim for relief for a deprivation of due process, and Section 1985 provides relief for deprivation of equal protection.

Section 1983 does not mention conspiracy but Section 1985 does; therefore, the Civil Rights Act provides a claim for conspiracy to deny equal protection but not for a conspiracy to deny due process. See *Jennings* v. *Nester*, to which I have previously alluded; *Ortega* v. *Rogers*, 216 F. 2d 561, a case which I had something to do with in the trial court; *Mitchell* v. *Greenough*, 100 F. 2d 184, decided by the Ninth Circuit in 1938.

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The conclusory allegations of the complaint do not embody a claim for relief. Indeed, it has been held that where the complaint characterizes the acts of the defendants as malicious, conspiratorial and done for the purpose of depriving plaintiffs of their constitutional rights, such allegations must be disregarded on a motion to dismiss. *McGuire* v. *Todd*, 198 F. 2d 60, decided by the Fifth Circuit in 1952; *Dunn* v. *Gazzola*, 216 F. 2d 709, a First Circuit case decided in 1954, and the *Ortega* case to which I have previously referred.

In the case at bar, the plaintiffs have made no factual allegations which support the assertion that the plaintiffs were denied equal protection of the law. As the Court stated in the *Jennings* v. *Nester* case at page 154:

> "The complaint clearly does not state a cause of action for a denial of equal protection. Although it alleges improper acts on the part of the defendants, there is nothing to indicate that every citizen of Illinois is not potentially subject to the same treatment."

The plaintiffs rely upon the case of *Wakat* v. *Harlib*, 253 F. 2d 59, decided by our circuit in 1958, in support of their contention that the defendants violated Section 1985.

Although the *Wakat* case contains language which indicates that Section 1985 may be violated when state officers discriminate against an individual rather than a class, the language has been held to be unnecessary and dicta. *Stift* v. *Lynch* to which I have previously referred.

In the *Wakat* case the plaintiff was described as a well known criminal and as such was denied equal protection by a police regulation having the force of law. Since the plaintiffs in the case at bar have not alleged that they were treated in a manner by the defendants which differs from the treatment others may suffer, they have not stated a claim upon which relief may be granted under Section 1985.

Now as to the alleged failure to prevent conspiracy, the plaintiffs allege that Pape and the John Doe police officers failed to prevent the alleged conspiracy which violated Section 1985 of the Civil Rights Act, and therefore violated Section 1986 of the Civil Rights Act.

Section 1986 provides in pertinent part that:

> "Every person who, having knowledge that any of the wrongs conspired to be done, and mentioned in Section 1985 of this title, are about to be committed, and having the power to prevent or aid in preventing the commission of the same, neglects or refuses so to do, if such wrongful act be committed, shall be liable to the party injured, or his legal representatives, for all damages caused by such wrongful act, which such person by reasonable diligence could have prevented; and any number of persons guilty of such wrongful neglect or refusal may be joined as defendants in the action."

The plaintiffs assert that if the conspiracy allegations state a claim for relief under Section 1985, the allegations with respect to the failure to prevent the conspiracy also state a claim for relief.

Since the conspiracy allegations do not state a claim upon which relief may be granted, the allegations of failure to prevent a conspiracy are similarly defective.

Now as to the City of Chicago, the defendant City of Chicago bases its motion to dismiss upon the ground that a municipal corporation is not liable for the wrongful acts of its police and that this immunity extends to a Civil Rights Act.

The plaintiffs argue, inter alia, that Congress did not intend that the Civil Rights Act should include municipal immunity; that the word "person" as used in the Civil Rights Act was intended to include a municipal corporation as well as any other person; that the need for uni-

formity throughout the various states dictates that municipal corporations be held liable under the Civil Rights Act; and that in some cases relief has been granted against municipal corporations in actions under the Civil Rights Act.

Although it has been held that municipal corporations are not liable under the Civil Rights Act, *Agnew* v. *City of Compton*, 239 F. 2d 226, decided by the Ninth Circuit in 1956; *Charlton* v. *City of Hialeah*, 188 F. 2d 421, decided by the Fifth Circuit in 1951, this immunity for the municipality has been drawn from the common law of the state in which the action arose.

In Illinois, the recent decision of *Molitor* v. *Kaneland Community Unit District 302*, Law Week 27-2609, June 2, 1959, strongly indicates that the doctrine of municipal immunity has been abandoned.

The *Molitor* case involved an action by a pupil against a school district for injuries sustained by the pupil while riding in a school bus. The Supreme Court of Illinois decided that although a school district had heretofore been protected from liability for the negligent acts of its agents, the doctrine of immunity which gave such a protection was no longer sound or just under modern conditions.

It should be noted that the *Molitor* case did not involve a municipal corporation.

In the case at bar, it is unnecessary to apply or interpret the *Molitor* decision since the liability of the City of Chicago is based upon the doctrine of *respondeat superior*, and since I have already held that the complaint fails to state a claim for relief against the agents of the city, there is no claim for relief against the city itself.

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Since the plaintiffs have not alleged any facts which support their conclusory allegations that the defendants violated the Civil Rights Act, the defendants' motion to dismiss, Mr. Clerk, will be allowed, and the complaint will be dismissed.

Mr. Moore: If the Court please, may we have leave to file an amended complaint?

The Court: No, I think I will let that order stand. I went into this very thoroughly. You have got a big, long complaint and we spent a lot of time on it, and I don't— moreover, counsel for the defendant has gone.

I will let my order stand as it is.

Mr. Moore: Thank you, your Honor.

APPENDIX D

Additional Statutes Involved

28 U.S.C. § 1343 (28 U.S.C.A. § 1343):

The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:

• • •

(3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States.

R.S. § 1980 (42 U.S.C.A. § 1985) (with relevant portions italicized):

• • •

(3) *If two or more persons in any State* or Territory *conspire* or go in disguise on the highway or **on the premises of another**, *for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws*, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice President, or as a Member of Congress of the United States; or to injure any

citizen in person on property on account of such support or advocacy; *in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property,* or deprived of having and exercising any right or privilege of a citizen of the United States, *the party so injured or deprived may have an action for the recovery of damages, occasioned by such injury or deprivation, against any one or more of the conspirators.*

R.S. § 1981 (42 U.S.C.A. § 1986):

Every person who, having knowledge that any of the wrongs conspired to be done, and mentioned in section 1985 of this title, are about to be committed, and having power to prevent or aid in preventing the commission of the same, neglects or refuses so to do, if such wrongful act be committed, shall be liable to the party injured, or his legal representatives, for all damages caused by such wrongful act, which such person by reasonable diligence could have prevented; and such damages may be recovered in an action on the case; and any number of persons guilty of such wrongful neglect or refusal may be joined as defendants in the action; and if the death of any party be caused by any such wrongful act and neglect, the legal representatives of the deceased shall have such action therefor, and may recover not exceeding $5,000 damages therein, for the benefit of the widow of the deceased, if there be one, and if there be no widow, then for the benefit of the next of kin of the deceased. But no action under the provisions of this section shall be sustained which is not commenced within one year after the cause of action has accrued.

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28 U.S.C. (1958 ed.) § 1331 (28 U.S.C.A. § 1331):

(a) The district courts shall have original jurisdiction of all civil actions wherein the matter in controversy exceeds the sum or value of $10,000, exclusive of interest and costs, and arises under the Constitution, laws, or treaties of the United States.

Amendment 14, Constitution of the United States:

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

APPENDIX E

Chronological List of 37 Reported Civil Suits against Police Officers under Civil Rights Act.

Hague v. *C.I.O.*, 307 U.S. 496 (1939), Modifying and aff'g 101 F. 2d 774 (3d Cir. 1939) and 25 F. Supp. 127 (D.N.J. 1938).

Gladstone v. *Galton*, 145 F. 2d 742 (9th Cir. 1944).

Picking v. *Pennsylvania R. Co.*, 151 F. 2d 240 (3d Cir. 1945); reh. den., 152 F. 2d 753 (1945) subsequent decision, 160 F. 2d 106 (1947); cert. den., 332 U.S. 776 (1947); reh. den., 332 U.S. 821 (1947).

Refoule v. *Ellis*, 74 F. Supp. 336 (N.D. Ga. 1947).

McShane v. *Moldovan*, 172 F. 2d 1016 (6th Cir. 1949); subsequent decision, 181 F. 2d 189 (1950).

Valle v. *Stengel*, 176 F. 2d 697 (3d Cir. 1949); rev'g 75 F. Supp. 543 (D.N.J. 1948).

Watkins v. *Oak Lawn Jockey Club*, 86 F. Supp. 1006 (W.D. Ark. 1949); aff'd 183 F. 2d 440 (8th Cir. 1950).

Robeson v. *Fanelli*, 94 F. Supp. 62 (S.D.N.Y. 1950); prior opinion, 91 F. Supp. 251 (1950).

Erickson v. *Hogan*, 94 F. Supp. 459 (S.D.N.Y. 1950).

Stefanelli v. *Minard*, 342 U.S. 117 (1951); Aff'g 184 F. 2d 575 (3d Cir. 1950).

McGuire v. *Amrein*, 101 F. Supp. 414 (D. Md. 1951).

Davis v. *Turner*, 197 F. 2d 847 (5th Cir. 1952).

State of Arkansas v. *Central Surety Corp.*, 102 F. Supp. 444 (W.D. Ark. 1952).

Yglesias v. *Gulfstream Park Racing Ass'n*, 201 F. 2d 817 (5th Cir. 1953); cert. den. 345 U.S. 993 (1953).

Mueller v. *Powell*, 203 F. 2d 797 (8th Cir. 1953); aff'g 105 F. Supp. 344 (W.D. Mo. 1952).

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Gould v. *Maguahan*, 207 F. 2d 714 (7th Cir. 1953).

Jennings v. *Nester*, 217 F. 2d 153 (7th Cir. 1954); cert. den. 349 U.S. 958 (1955).

Dye v. *Cox*, 125 F. Supp. 714 (E.D. Va. 1954).

Duncan v. *Williams*, 219 F. 2d 428 (9th Cir. 1955).

Lewis v. *Brautigam*, 227 F. 2d 124 (5th Cir. 1955).

McCollum v. *Mayfield*, 130 F. Supp. 112 (N.D. Calif. 1955).

Thompson v. *Baker*, 133 F. Supp. 247 (W.D. Ark. 1955).

Davis v. *Johnson*, 138 F. Supp. 572 (N.D. Ill. 1955).

Agnew v. *City of Compton*, 239 F. 2d 226 (9th Cir. 1956); cert. den. 353 U.S. 959 (1957).

Pollack v. *Newark*, 147 F. Supp. 35 (D.N.J. 1956); aff'd, 248 F. 2d 543 (3d Cir. 1957); cert. den., 355 U.S. 964 (1958).

Mackey v. *Chandler*, 152 F. Supp. 579 (W.D.S.C. 1957).

Coleman v. *Johnson*, 247 F. 2d 273 (7th Cir. 1957).

Simmons v. *Whitaker*, 252 F. 2d 224 (5th Cir. 1958).

Wakat v. *Harlib*, 253 F. 2d 59 (7th Cir. 1958).

Carey v. *Ragan*, 257 F. 2d 449 (5th Cir. 1958); cert. den., 358 U.S. 851 (1958); reh. den., 358 U.S. 914 (1958).

Hampton v. *DeBlaay*, 258 F. 2d 790 (6th Cir. 1958); cert. den. 358 U.S. 850 (1958); reh. den. 359 U.S. 922 (1959).

Jackson v. *Duke*, 259 F. 2d 3 (5th Cir. 1958).

Watson v. *Devlin*, 167 F. Supp. 638 (E.D. Mich. 1958); aff'd 268 F. 2d 211 (6th Cir. 1959).

Stiff v. *Lynch*, 267 F. 2d 237 (7th Cir. 1959).

Deloach v. *Rogers*, 268 F. 2d 928 (5th Cir. 1959).

Haifetz v. *Rizzo*, 171 F. Supp. 654 (E.D. Pa. 1959).

Egan v. *Aurora*, 174 F. Supp. 794 (N.D. Ill. 1959).

APPENDIX F

Civil Cases Under the Civil Rights Act Against Police Officers In Which Certiorari Has Been Denied.

Opinion Below	*Certiorari Denied*
Hampton v. *DeBlaay*, 258 F. 2d 790 (6th Cir. 1958).	358 U.S. 850 (1958) *reh. den.* 359 U.S. 922 (1959).
Curry v. *Ragan*, 257 F. 2d 449 (5th Cir. 1958).	358 U.S. 851 (1958) *reh. den.* 358 U.S. 914 (1958).
Pollack v. *Newark*, 147 F. Supp. 35 (D.N.J. 1956) *aff'd*, 248 F. 2d 543 (3d Cir. 1957).	355 U.S. 964 (1958).
Agnew v. *City of Compton*, 239 F. 2d 226 (9th Cir. 1956).	353 U.S. 959 (1957).
Jennings v. *Nester*, 217 F. 2d 153 (7th Cir. 1954).	349 U.S. 958 (1955).
Yglesias v. *Gulfstream Park Racing Ass'n.*, 201 F. 2d 817 (7th Cir. 1953).	345 U.S. 993 (1953).
Picking v. *Pennsylvania R. Co.*, 151 F. 2d 240, *reh. den.*, 152 F. 2d 753 (3d Cir. 1945) *subsequent decision*, 160 F. 2d 106 (3d Cir. 1947).	332 U.S. 776 (1947) *reh. den.* 332 U.S. 821 (1947).

APPENDIX G

Reported Civil Cases Under the Civil Rights Act Against Police Officers With Description of Facts and Holdings, by Circuits.

SUPREME COURT

1. *Hague* v. *C. I. O.*, 307 U.S. 496 (1939) modifying and aff'g 101 F. 2d 774 (3d Cir. 1939) and 25 F. Supp. 127 (D.N.J. 1938)	Suit to enjoin, *inter alia*, arrests, confiscation of pamphlets and ejection of individuals from city, committed by local police, acting under unconstitutional ordinance, for purpose of depriving plaintiffs of speech and assembly rights. Injunction issued.
2. *Stefanelli* v. *Minard*, 342 U.S. 117 (1951) aff'g 184 F. 2d 575 (3d Cir. 1950)	Suit to enjoin use in State criminal proceeding of evidence illegally seized by local police. Relief denied in exercise of "equitable discretion."

FIRST CIRCUIT

(No cases.)

SECOND CIRCUIT

3. *Erickson* v. *Hogan*, 94 F. Supp. 459 (S.D.N.Y. 1950)	Suit to enjoin use in State criminal proceeding of evidence illegally seized by local police. Relief denied. *Dictum* that damage action can be maintained, and leave granted to amend complaint accordingly.
4. *Robeson* v. *Fanelli*, 94 F. Supp. 62 (S.D.N.Y. 1950) prior opinion, 91 F. Supp. 251 (1950)	Damage complaint alleging, *inter alia*, conspiracy, assaults, and failure to prevent rioting at public political meeting. Complaint upheld.

THIRD CIRCUIT

5. *Picking* v. *Pennsylvania R. Co.*, 151 F. 2d 240 (1945) *reh. den.*, 152 F. 2d 753 (1945) subsequent decision, 160 F. 2d 106 (1947) *cert. den.*, 332 U.S. 776 (1947) *reh. den.*, 332 U.S. 821 (1947)	Damage complaint alleging, *inter al* false arrest, imprisonment and physi mistreatment, *semble*. See 151 F. 2 at 249. Complaint upheld. Plaintif appeared *pro se*.
6. *Valle* v. *Stengel*, 176 F. 2d 697 (1949) *rev'g* 75 F. Supp. 543, (D.N.J. 1948)	Complaint for damages and injunctio alleging *inter alia*, false arrest by pol chief in aid of private swimming poo illegal (under state law) segregatio policy. Complaint upheld.
7. *Pollack* v. *Newark*, 147 F. Supp. 35 (D.N.J. 1956) *aff'd*, 248 F. 2d 543 (3d Cir. 1957) *cert. den.*, 355 U.S. 964 (1958)	Suit for damages alleging plaintiff's a bitrary arrest by police. Complaint an affidavit of plaintiff (who appeared *pr se*) fail to make out, even *prima faci* a false arrest. Summary judgment fo defendant. Court assumes that arre without probable cause gives action u der Act.
8. *Haifetz* v. *Rizzo*, 171 F. Supp. 654 (E.D. Pa. 1959)	Suit to enjoin "mass raids" on coffe shop and for damages for ensuing arb trary arrests. Preliminary injunctio denied. Decision on "serious and sub stantial questions" raised by action, de ferred to hearing on merits.

Appendix G

FOURTH CIRCUIT

9.	
Doe v. *Cox*, 125 F. Supp. 714 (E.D.Va. 1954)	Damage complaint alleging false arrest, overnight secret detention plus beating. On motion to dismiss, *held* that no cause of action stated because plaintiff failed to allege specific intent to deprive him of his constitutional rights. Leave given plaintiff to amend his complaint accordingly.
10.	
Macken v. *Chandler*, 152 F. Supp. 579 (W. D. S. C. 1957)	Damage action alleging unreasonable search and seizure, secret detention and brutality. Jury verdict for plaintiffs. Judgment *n.o.v.* for defendants on grounds that allegations and proof fail to make out a federal cause of action.
11.	
McGuire v. *Amrein*, 101 F. Supp. 414 (D. Md. 1951)	Suit to enjoin use in state criminal proceeding of wiretap evidence obtained by local police. Relief denied in exercise of "equitable discretion." Alternatively, no cause of action pleaded because no *constitutional* violation alleged, citing *Olmstead* v. *U. S.*, 277 U.S. 438 (1928).

FIFTH CIRCUIT

12.	
Davis v. *Turner*, 197 F. 2d 847 (1952)	Damage action alleging unreasonable search and seizure, battery and secret detention. Complaint upheld.
13.	
Valesio v. *Gulfstream Park Racing Ass'n.*, 201 F. 2d 817 (1953) *cert. den.* 345 U.S. 993 (1953)	Damage action alleging false imprisonment followed by improper trial on criminal charges. Complaint dismissed.

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FIFTH CIRCUIT (Continued)

14. *Lewis* v. *Brautigam*, 227 F. 2d 124 (1955)	Damage complaint alleging, *inter al* coercion of confession by psychologic pressures, threats and intimidatio Complaint upheld.
15. *Simmons* v. *Whitaker*, 252 F. 2d 224 (1958)	Damage complaint alleging threats sheriff to arrest plaintiff in the cour of sheriff's successful effort to fo plaintiff to pay large hospital bills a though she was not liable for them. I rected verdict for sheriff affirmed. N proof sheriff acted under color of la No proof sheriff acted with specific tent to deny constitutional rights.
16. *Jackson* v. *Duke*, 259 F. 2d 3 (1958)	Damage action based on brutal beat and false arrest. Judgment on jury v diet of $5,000.00 affirmed.
17. *Curry* v. *Ragan*, 257 F. 2d 449 (1958) *cert. den.*, 358 U.S. 851 (1958) *reh. den.*, 358 U.S. 914 (1958)	Damage complaint, filed by lay ma se alleging malicious institution of fo ble entry and detainer action by priva citizen. Three defendant policemen a ing pursuant to court order, assisted ejecting plaintiff from his home. Co plaint dismissed.
18. *Deloach* v. *Rogers*, 268 F. 2d 928 (1959)	Damage complaint alleging false arre and beating by officers acting pursua to "peace warrant." Complaint di missed.
19. *Refoule* v. *Ellis*, 74 F. Supp. 336 (N.D. Ga. 1947)	Suit to enjoin repeated false arrests fo lowed by secret police interrogations o plaintiff. Injunction issued.

Appendix G

SIXTH CIRCUIT

20. *McShane* v. *Moldovan*, 172 F. 2d 1016 (1949) *subsequent decision*, 181 F. 2d 189 (1950)	Damage complaint alleging false imprisonment and conspiracy to "frame" plaintiff on a state criminal charge. Complaint upheld.
21. *Watson* v. *Derbin*, 167 F. Supp. 638 (E.D. Mich. 1958) *aff'd* 268 F. 2d 211 (1959)	Damage complaint alleging long secret detention plus "malicious prosecution" and "false arrest," filed by state convict, *pro se*. Held, complaint frivolous, leave to proceed in *forma pauperis* denied.
22. *Hampton* v. *DeBlaay*, 258 F. 2d 730 (1958) *cert. den.*, 358 U.S. 850 (1958) *reh. den.*, 359 U.S. 922 (1959)	Damage complaint alleging false arrest and imprisonment, filed by convict, *pro se*. Summary judgment for defendants affirmed. Plaintiff's admissions in prior State Court proceedings negate existence of any cause of action or issue of fact.

SEVENTH CIRCUIT

23. *Gindi* v. *Monnahan*, 207 F. 2d 714 (1953)	Damage complaint alleging unreasonable search, secret detention, beating to obtain confession filed by convict, *pro se*. Complaint upheld.
24. *Simmons* v. *Nestor*, 217 F. 2d 153 (1954) *cert. den.* 349 U.S. 958 (1955).	Damage complaint alleging unreasonable search, secret detention, beating to obtain confession filed by convict, *pro se*. Complaint dismissed.

Appendix G

SEVENTH CIRCUIT (Continued)

25. *Coleman* v. *Johnson*, 247 F. 2d 273 (1957)	Damage complaint alleging three day secret detention of [illegible] suffering from bullet wounds, refusal to furnish medical care, malicious prosecution. Complaint upheld.
26. *Wakat* v. *Harlib*, 25[illegible] F. 2d 59 (1958)	Damage action based on six day secret detention, beating to obtain confession of plaintiff, a "well-known criminal," and conspiracy to accomplish the secret. Judgment on jury verdict of $15,000 affirmed.
27. *Stift* v. *Lynch*, 267 F. 2d 237 (1959)	Damage complaint alleging false arrest and two hour (p. 238 n. 1) secret detention. Complaint dismissed.
28. *Davis* v. *Johnson*, 138 F. Supp. 572 (N.D.Ill. 1955)	Damage complaint alleging battery with a pistol followed by fatal shooting. Complaint upheld.
29. *Egan* v. *Aurora*, 174 F. Supp. 794 (N.D.Ill. 1959)	Damage complaint alleging false arrest of political speaker. Complaint dismissed.

EIGHTH CIRCUIT

30. *Mueller* v. *Powell*, 203 F. 2d 797 (1953) *aff'g* 105 F. Supp. 344 (W.D. Mo. 1952)	Damage action based on alleged false arrest and all night secret detention for interrogation. Judgment on merits for defendants after bench trial, affirmed. Defendants had "probable cause" to arrest and question plaintiff.
31. *State of Arkansas* v. *Central Surety Corp.*, 102 F. Supp. 444 (W.D. Ark. 1952)	Damage complaint alleging false arrest and repeated batteries. Complaint upheld. Summary judgment for defendants denied.

Appendix G

EIGHTH CIRCUIT (Continued)

32.

Thompson v. *Baker*, 133 F. Supp. 247 (W.D. Ark. 1955) — Action for injunction, declaratory judgment and damages alleging improper (under state law) issuance and service of garnishment writs. Complaint dismissed.

33.

Watkins v. *Oak Lawn Jockey Club*, 86 F. Supp. 1006 (W.D. Ark. 1949) *aff'd* 183 F. 2d 440 (1950) — Damage action based on false arrest by deputy sheriff, employed part-time by race track. Held, (after trial on merits followed by "hung" jury)—Directed verdict for defendants.

NINTH CIRCUIT

34.

Galbraith v. *Galbon*, 145 F. 2d 742 (1944) — Complaint for damages and injunction, alleging arrests, searches and prosecutions of plaintiff pursuant to allegedly unconstitutional ordinance. Complaint dismissed. Ordinance is constitutional.

35.

Dorsey v. *Williams*, 219 F. 2d 428 (1955) — Damage complaint alleging false arrest and 20 hour secret detention. Complaint dismissed.

36.

Lopez v. *City of Compton*, 239 F. 2d 226 (1956) *cert. den.* 353 U.S. 959 (1957) — Damage complaint alleging false arrest. Complaint dismissed.

37.

McCollum v. *Mayfield*, 130 F. Supp. 112 (N.D. Cal. 1955) — Damage complaint alleging that plaintiff, jailed pending criminal trial, was forced to do menial labor, suffered injuries in the course of such labor, and was denied medical care. Complaint upheld.

TENTH CIRCUIT

(No cases.)

DISTRICT OF COLUMBIA CIRCUIT

(No cases.)